ZIONS FIRST NATIONAL BANK

IBLA 82-667 Decided September 8, 1982

Appeal from a decision of the Colorado State Office, Bureau of Land Management, denying petitions for reinstatement of oil and gas leases C-19710 and C-29738.

Affirmed.

1. Oil and Gas leases: Reinstatement -- Oil and Gas Leases: Termination

   A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." Delivering the rental payment to BLM after it is due does not constitute reasonable diligence.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

   A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. The breakdown of a system for payment of lease rentals allegedly because of confusion attributed to a probate lawsuit is not a sufficiently extenuating circumstance outside the lessee's control to justify late payment.

APPEARANCES: James A. Holtkamp, Esq. and Jeffery C. Collins, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Zions First National Bank (Zions), personal representative of the estate of John E. Oakason, Jr., has appealed from the March 3, 1982, decision of the Colorado State Office, Bureau of Land Management (BLM), denying petitions for reinstatement of oil and gas leases C-19710 and C-29738.

Oil and gas lease C-19710 was issued to Howard B. Cahoon effective January 1, 1974, for a 10-year term. By assignment effective February 1, 1974, the lease was assigned to H. B. Cahoon Investment Company (75 percent) and John E. Oakason, Jr. (25 percent). As a result of commitment of the lease to the Delta Unit effective June 8, 1979, 1,120 acres in the lease not within the unit were segregated into lease C-29738. Three hundred and twenty acres remained in C-19710.

On March 17, 1977, John E. Oakason, Jr., died and Zions was appointed his personal representative and succeeded to management of the 25 percent interest held in the subject leases. Zions has stated on appeal, however, that Jean Oakason, decedent's widow, is primarily responsible for maintenance of these and other leases.

The 1982 annual rentals for both leases were due in the BLM office on or before January 4, 1982. BLM states in its decision that "[p]ayments for both leases were actually received by hand delivery to this office on January 5, 1982." 1/

BLM issued notices of termination on January 22, 1982, to H. B. Cahoon Investment Company with copies to Jean Oakason. On February 8, 1982, petitions for reinstatement were filed by counsel on behalf of the "Estate of John E. Oakason, Jr." BLM denied the petitions and this appeal was filed.

[1] An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). A terminated lease can be reinstated only if, among other requirements, the lessee shows that the failure to pay on time was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c).

On appeal counsel for appellant explains the circumstances surrounding the rental payments as follows:

1/ The notices of termination issued for the two leases both stated that "the payment was not received until 7:45 a.m. on January 6, 1982." Apparently what happened is that on Jan. 5, 1982, two cashiers checks were presented to BLM. Copies of the checks in the case records indicate that $140 was paid for lease C-29378 and $40 paid for C-19710. Those checks represented 25 percent of the lease rental due for each lease. The next day a check for $540 was received. It was drawn on the account of Marsh Oil Company and Connie Mull and signed by Connie Mull. Notation on the face of the check indicated that $120 was for C-19710 and $420 for C-29378.

> [D]uring the latter part of December, 1981, Jean Oakason, the person charged with the duty of timely making said rental payments, traveled away from her home and office, both of which are located in Salt Lake City, Utah. Ms. Oakason did not return home until after the anniversary date of the subject leases. Despite not having received notice of said due date, Ms. Oakason, prior to leaving Salt Lake City, made extensive arrangements and undertook numerous precautions to insure that the subject payments would be made in a timely manner. Those arrangements included, but were not limited to, the checking of personally prepared lease registers, the inspection of all lease files held by Ms. Oakason, both at home and in her office, together with the preparation and timely payment of all lease rentals appearing therein. It was reasonably assumed by Ms. Oakason that said registers, prepared specifically for the purpose of alerting and evidencing such rental payments, together with the lease files in her custody, contained reference to all of the due and owing payments. Indeed, all of the due and owing payments contained therein were timely paid and received by the appropriate offices.
>
> Unbeknownst to Ms. Oakason, however, and through no fault of her own, the lease files regarding the subject leases were not in her office, her home, or anywhere else within her custody. Said files, in addition to numerous others not relevant hereto, were, by reason of a lawsuit instituted by other heirs of John E. Oakason, Jr., spread throughout various locations. Said files were subsequently discovered to reside, in part, at the offices of Sonia McCormick. This fact was not reasonably known to Ms. Oakason at the time of her preparation of said rental payments. Such justifiable ignorance was proximately caused by the institution and prosecution of said lawsuit, together with the voluminous documentation produced thereby and the legal interaction and intermingling of third parties into the affairs of her late husband, including his oil and gas interests and the documents attendant thereto.
>
> Having made and performed the above-noted arrangements, precautions and payments, Ms. Oakason left Salt Lake City, returning on January 1, 1982. Upon returning to her office on January 5, 1982, for the first time since her December departure, Ms. Oakason discovered, through communications with Sonia McCormick and/or other third parties having knowledge of the Estate's oil and gas interests, that the annual rentals upon the subject leases had not been timely made. On that same day arrangements were made whereby the appropriate sums were hand delivered to the Colorado State Office of the Bureau of Land Management ("BLM") on January 5, 1982.

(Statement of Reasons at 2-4).

The Board has held that delivering the rental payment to BLM after it is due does not constitute reasonable diligence. Dome Petroleum Corp.,

59 IBLA 370, 374, 88 I.D. 1012, 1015 (1981), and cases cited therein. While appellant is cognizant of our holdings concerning the reasonable diligence standard, it urges that the rationale of Lillie Belle Higgins, 38 IBLA 254 (1978), is applicable here.

In Higgins the appellant submitted a postdated check to BLM prior to the anniversary date of the lease. The check was returned by BLM, and a second check was tendered by the appellant 3 days after the anniversary date. The Board, in a split decision, granted reinstatement, holding that appellant had shown reasonable diligence.

We do not find Higgins persuasive. Appellant understates the critical distinction between Higgins and the present case. In Higgins the rental was tendered by "check" prior to the anniversary date. Appellant in this case made no submission of the rental on or before the anniversary date. There can be no finding of reasonable diligence.

[2] A failure to make timely payment may be justifiable, however, if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affect its actions in paying the rental fee. International Resource Enterprises, Inc., 55 IBLA 386 (1981); see Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981); see also Martin Mattler, 53 IBLA 323, 88 I.D. 420 (1981).

Appellant directs our attention to Genevieve C. Asbye, 33 IBLA 285 (1978), in which we stated that "[t]here is no definitive list of factors which may qualify as a justifiable excuse. Each case must be considered by itself." The cases cited in Asbye refer to natural disasters, deaths, or illness. Appellant asserts that the probate lawsuit "equally as disruptive as all such events" (Statement of Reasons at 8).

We cannot find that the reasons set forth by appellant justify the late payment. Appellant has stated that Ms. Oakason took numerous precautions to insure timely payment of lease rentals and that other payments for other leases were made timely. However, the fact that the lease files in question were at a location other than Ms. Oakason's office or home, which appellant asserts was the result of a complex lawsuit involving numerous parties, is not a circumstance "outside the lessee's control."

Ms. Oakason was in control of the procedures for lease rental payment and had assumed responsibility for making those payments. The procedures she established failed to guarantee that timely payment was made. The breakdown of that system allegedly because of confusion attributable to the lawsuit is not a sufficiently extenuating circumstance to justify late payment. Cf. David E. Cooley, Jr., 62 IBLA 87 (1982) (inadvertent misplacement of office records during changeover in office location following dissolution of law partnership found not to justify late payment); Mono Power Co., 28 IBLA 289 (1976) (confusion and disruption of business operations due to office remodeling found not to justify late payment).

In addition, the fact that Ms. Oakason traveled away from home and did not return home until January 1, 1982, cannot be considered a circumstance

beyond her control so as to justify the late payment. See James M. Chudnow, 62 IBLA 13 (1982); Michael Morrisroe, Jr., 56 IBLA 49 (1981).

BLM properly denied the petitions for reinstatement.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Anne Poindexter Lewis
Administrative Judge